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Orange County Pesticide Regulatory Program 2007/2008 Performance Evaluation Report

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Performance Evaluation of the Orange County Agricultural Commissioner Pesticide Use Enforcement Program

This report provides a performance evaluation of Orange County Agricultural Commissioner's (ORA CAC's) pesticide use enforcement (PUE) program for the fiscal year 2007-2008 (FY 07/08). This report covers the second year of the ORA CAC's three-year work plan. The assessment evaluates the performance of goals identified in the ORA CAC's enforcement work plan as well as the program's adherence to Department of Pesticide Regulation (DPR) standards as described in the Pesticide Use Enforcement Program Standards Compendium. Most workload numbers in this summary are derived from the county's annual totals on their Pesticide Regulatory Activities Monthly Reports (PRAMR) submitted to DPR. Additional structural Branch 1 compliance monitoring activities were also conducted as part of the industry-funded Structural Fumigation Enforcement Program.

I. Summary Report of Core Program Elements

A) Restricted Materials Permitting:

The restricted materials permitting program element was found to meet DPR standards and work plan goals.

B) Compliance Monitoring:

The compliance monitoring program element was found to meet DPR standards and work plan goals.

C) Enforcement Response:

The enforcement response program element was found to meet DPR standards and work plan goals.

Summary Statement:

No deficiencies have been identified in the ORA CAC's pesticide use program and the program is currently effective. Orange CAC's three year work plan had estimated 15,500 hours of staff time per year would be devoted to pesticide use enforcement core program activities. In FY 07/08 ORA CAC total program hours were 14,008 (approximately 90% of estimated). Due to chronic staffing shortages during the past 2 years, the third year of the ORA CAC work plan should be amended to more accurately reflect actual staff resources available for this program.

II. Assessment of Core Program Effectiveness and Work Plan Goals

A) Restricted Materials Permitting:

1) Permit Issuance – Effective

The ORA CAC permit issuance procedures and performance were evaluated through observation, records review, and interviews with relevant staff and found to conform to DPR standards and expectations, including the determination of whether feasible alternatives existed or were required. The inspectors that issue permits possess Pesticide Regulations and Investigation and Environmental Monitoring licenses.

ORA CAC issued 130 agricultural permits, 16 non-agricultural permits, and 104 operator identification numbers during FY 07/08. ORA CAC also had 87 multi-year permits in 07/08.

The DPR evaluation determined that permits are:

- Issued only to qualified applicants;
- Signed by authorized persons;
- Issued for time periods allowed by law;
- Permit amendments followed approved procedures

2) Site Evaluation – Effective

The ORA CAC gives the highest priority in pre-site evaluation inspections and other associated site-monitoring activities to applications involving fumigants, other Category I pesticides, and restricted material applications near sensitive sites. The ORA CAC site evaluation procedures were evaluated through observation, records review, and interviews of relevant staff and found to conform to DPR standards and expectations.

The permits:

- Contained the required information;
- Identified treatment areas and sensitive areas that could be adversely impacted by the permitted uses;
- Identified mitigation measures and included conditions that addressed known hazards.

The ORA CAC staff adequately evaluated permits and determined if the use of feasible alternatives was required. The program reviews all NOIs in a timely manner and adequately monitored agricultural and non-agricultural permits utilizing pre-application site evaluations and use monitoring inspections.

B) Compliance Monitoring:

1) Inspections – Effective

In addition to all other types of use monitoring, storage, and various records inspections normally performed by counties and reported on the PRAMR to DPR, the ORA CAC program conducts additional structural fumigation (Branch 1) use monitoring, records, and storage inspections as part of their participation in the Structural Fumigation Enforcement Program (SFEP). During FY 07/08 ORA CAC performed a total of 407 inspections under their agricultural enforcement program, 516 structural “complete” inspections (PRAMR combined total of Branch 1, 2, and 3) and 1,320 partial inspections. An additional 766 Branch 1 inspections (some complete and some partial) were conducted for the industry funded SFEP activities.

ORA CAC inspection procedures were evaluated through DPR oversight inspections and records review and found to conform to DPR standards and expectations. Inspectors that possess Pesticide Regulation and Investigation and

Environmental Monitoring licenses perform inspections. Inspections are performed according to the inspection strategy documented in the ORA CAC's enforcement work plan. Inspections are performed according to DPR policies and procedures; inspections reports are complete and comprehensive. The inspections adequately provide the information necessary to successfully prosecute violations.

Inspections performed by the ORA CAC staff were found to:

- Adequately address label, law, and regulatory requirements;
- Include interviews of employers and employees as appropriate;
- Adequately document violations;
- Include appropriate follow-up inspections and procedures.

2) Investigations – Effective

The ORA CAC investigation procedures and performance were evaluated through observation, records review, and interviews of relevant staff and found to conform to DPR standards and expectations. ORA CAC staff investigated a total of **68** investigations (this includes DPR WH&S assigned and other complaints) during FY 07/08, which is an increase of approximately **38%** more than the previous year. Nine (**9**) of these investigations met USEPA priority criteria, which is more than double the number of priority investigations compared to previous years for this county. ORA CAC investigates all complaints and complete the reports in a timely manner. ORA CAC refers and notifies DPR and other agencies, as required.

Investigations are thorough and complete and submitted on approved forms and in the approved format. The investigations document violations and ORA CAC collects evidence according to DPR standards. The investigations adequately provide the information necessary to successfully prosecute violations.

C) Enforcement Response: – Effective

The ORA CAC enforcement response program was evaluated through observation, records review, and interviews of relevant staff and was found to conform to DPR standards and expectations. ORA CAC took **4** Agricultural Civil Penalty (ACP) actions, and **42** Structural (SCP) actions in FY 07/08 and a total of **153** compliance actions (Notice of Violation, Warning Letters, etc.). For the ACP cases the average time elapsed from Date of Incident to Date of NOPA was approximately 9 months or 273 days (ACP statute of limitations is two years). For the SCP cases the average time elapsed from Date of Incident to Date of NOPA was approximately 7 months or 212 days (SCP statute of limitations is one year).

ORA CAC's enforcement program was found to:

- Initiate appropriate action when violations are identified;
- Sufficiently support compliance, enforcement, and public protection actions;
- Ensure that due process requirements are met when taking an enforcement or permit action, or when initiating a private applicator certification or registration refusal/revocation.

III. Recommended Corrective Actions

No corrective actions are currently needed.

IV. Non-Core and Desirable Activities

Outreach and Training

ORA CAC's ongoing activities include presentations at various structural and agricultural industry professional association meetings, and their involvement in the Structural Fumigation Enforcement Program (SFEP) committee.

- ORA CAC also gave annual continuing education training for qualified applicator licensees and private applicators (growers) in the production agriculture industry that fumigate fields in the county.
- ORA CAC distributed and discussed compliance documents covering the new 3CCR 6739 respiratory regulations with various restricted material permittees who have employee handlers during the permit issuance season. This information was also shared with other affected industry during their headquarters and records inspections throughout the year.